NOTES OF RECENT AMERICAN CASES.

Supreme Court of Pennsylvania at Pittsburg, 1852.

Arbitrament.—Where parties submit a matter in dispute to arbitration, without any action, or any agreement to make the matter a rule of court, and stipulate that each party shall have twenty days to appeal from the award, this is equivalent to a reservation of time to elect to avoid the award, and claim a regular common law trial. *The Corporation of Erie* v. *Tracy.* LEWIS, J.

Assumpsit for Labour and Services—Master and Servant.—Where a person is received into a family as a child, and not as a servant, as an object of charity, and not as a hireling, that relation is never changed by legal implication into a relation, giving a right to wages; and that right never arises as between those parties, except from an express contract, or something equivalent thereto. *Lang* v. *Frey.* LOWRIE, J.

Thus, where one becomes a member of her step-father's family, she cannot claim an implied contract for wages. The parties stand to each other in a family relation, and until that relation is dissolved by some unequivocal act, and the relation of master and servant substituted, the law cannot interfere to compel the payment of wages. Such an interference of the State with the family relation would be dangerous in the extreme. *Ibid.*

Bailment.—No bailee is bound, on giving a receipt for goods, to open the packages to see if they correspond with the name given to them. If he acts in good faith, he is not answerable to another who advanced goods on the faith of the transaction: for the reliance was not properly on him, but on the honesty of the man who procured the receipt. *Grier* v. *Nickle.* LOWRIE, J.

Bailment—Lien of Mechanics.—One employed to dig ore has no lien upon the ore dug for his wages. *Ritter* v. *Gates.* BLACK, C. J.

Bailment—Carrier.—Where goods are damaged in the hands of the first carrier, and the second carrier, knowing this fact, and intending to aid in concealing it, gives the first carrier a clean bill of lading, he will not be allowed to show that they were damaged when he received them, in order to evade the payment of the damages. *Bowman* v. *Kennedy.* LEWIS, J.

Bond—Alteration of Bond or Bill.—A material alteration of a

bond by the holder of it, avoids the instrument, even though it appear that it was honestly made, for the purpose of correcting a mistake. *Miller* v. *Gilleland.* GIBSON, J. WOODWARD and LOWRIE, JJ., dissenting, and a written opinion filed. *S. P. Getty* v. *Shearer.* LEWIS, J.

Canal Commissioners—Presumption.—Where the Canal Commissioners have taken a lot for a lock-house, and have erected a house upon it, the former owner may not resume the possession for the purpose of testing the regularity of the appropriation to public use. *Ligat* v. *The Commonwealth.* LEWIS, J.

There is a presumption in favor of the acts of public officers, that forbids individuals from thus taking the law into their own hands, when it furnishes them an ample remedy. *Ibid.*

It is necessary for the public interest that the Canal Commissioners should keep a record of the land thus appropriated to public use, but where the former owner wrongfully resumes the possession, he cannot claim such record in evidence of the State's title, in an action brought by the State to put him out.—*Ibid.*

The Canal Commissioners are the proper judges of the propriety of selecting a new location for a lock house, and this Court cannot control their discretion. And they are the final judges as to the value of the land appropriated; and the law making them such is not inconsistent with the constitutional guaranty of trial by jury, for this does not apply to cases where the State is a party. *Ibid.*

Contract—Mistake of Law—Concealment.—Where a party, bound in conscience to do a certain act, executes a writing binding him in law, he will not be excused from it on the ground that a decision of the Supreme Court was known to the other party, and not to him, which declared his first obligation invalid in law. *Cornman* v. *Bowser.* LEWIS, J.

Corporation—Compensation for Property taken for Rail Road.—The amount of damages in rail road cases cannot be assigned for error in this Court, for it has, and can have, no proper means of judging of the finding of the jury. *Ohio and P. R. Road Co.* v. *Bradford's Heirs.* BLACK, C. J.

Corporation—Sequestration.—Where a turnpike road is sequestered, it is placed in the care of the Court, and the sequestration cannot be revoked until all the expenses incurred in the care of the road are refunded. *Beam* v. *The Somerset and C. T. Road Co.* LOWRIE, J.

While this road was under sequestration, an act was passed authorizing creditors to seize and sell it under a fi fa., which was done. *Held*, that the sequestrator was entitled, on the distribution, to a preference to the amount of his confirmed account. *Ibid.*

Corporation—Compensation for Property taken for Rail Road—Error.—This Court cannot inquire into the amount of damages allowed by the inquest in rail road cases. The evidence on which they proceed consists partly of a view which we cannot have. *The O. and Pa. R. R. Co.* v. *Vicary.* WOODWARD, J.

Here there was an error that might have justified a reversal; but it was not excepted to within the ten days provided by the Act of Assembly, and therefore cannot be noticed here. *Ibid.*

Debtor—Fraudulent Conveyance—Resulting Trust.—Where a father purchased land, and paid part of the purchase money, and then gave it to his sons, which act was a fraud upon creditors on his part, but not so on the part of the sons, and the creditors afterwards sold the land on execution as the property of the father, it was held:

1. That only so much of the title as the sons acquired by the gift could be pursued by the creditors.

2. That when the sons paid the balance of the purchase money, and got a deed for the land, they became substituted to the rights of the vendor, which, before that, he had in the land.

3. That the sheriff's vendees, who were substituted for the creditors, had no other right against the sons than they would have had against the vendor, and could not claim the land without tendering the balance of the purchage money and interest. *Ogle* v. *Lichteberger.* LOWRIE, J.

Decedent—Partition in Orphans' Court.—In a proceeding in partition, land is not converted into money until the conditions of sale are complied with, at least so far as to entitle the party to his deed. And where one of the co-partners was a married woman, and died before the proceedings were so far complete, her share descends as land, and not as money. *The Estate of John Bigget.* LEWIS, J.

Executor.—Settlement of Administration Account.—Where an administrator settled one account in 1818, and another in 1824, and both were confirmed, and showed a balance in his favor, it is right for the Court, in 1850, to treat the estate as settled up, and to refuse to order a new account, though there is evidence of some collections made after 1824, which were

not equal to the balance due to the administrator by the account of that year. *The Estate of Matthew Karns.* LOWRIE, J.

Husband and Wife—Divorce.—Where a husband sues his wife for a divorce, and fails, it is proper for the Court to allow to the wife her necessary expenses incurred while defending against the suit. *Gardner* v. *Gardner.* LEWIS, J.

Husband and Wife—Witness.—Where a married woman is called as a witness, and objected to on the ground of interest, she cannot remove the objection by a release in which her husband does not join, notwithstanding the act of 1848. *Ulp* v. *Campbell.* BLACK, C. J.

Insurance—Parting with Interest—Mutual Insurance Companies.—Interest in the property insured is an essential link in the relation of Insurance, and therefore the insured may dissolve it by a sale of his interest. *Wilson* v. *Trumbull Mutual Ins. Co.* LOWRIE, J.

In mutual insurance companies, membership and insurance are inseparable, and when membership ceases, all liability for future losses ceases; and therefore a deposit note, given by an insured as a means of securing the payment of losses, cannot be used to compel payment for losses occurring after he ceased to be a member, though he terminated his membership by a sale of his property before the period of insurance had expired. *Ibid.*

Judgment, what Interest Bound by—Power to Sell for Maintenance.—Where a will directs exectors to sell land and apply the proceeds to the support and education of children, according to the judgment of the executors, and to divide the money among all the testator's children equally; this breaks the descent, and the children have no such interest in the land as is subject to execution. *Campbell* v. *King.* LEWIS, J.

Justice—Recognizance on Appeal.—Where the recognizance on appeal from the judgment of a justice was taken with condition to "appear *to* prosecute the appeal with effect," the plain intention is, that "to" should be read "and;" and a recognizance under this form is sufficient, under the Act of 20th March, 1845. *Murray* v. *Hazlett.* LOWRIE, J.

Landlord and Tenant—Ejectment.—When the lessee covenants to restore the possession at the end of the term, without notice, and the lessor may then, or at any time thereafter, re-enter upon the premises; a holding over for several years does not constitute such a tenancy from year to year, as requires three months notice to quit before bringing ejectment. *McCanna* v. *Johnston.* LEWIS, J.

A defendant in ejectment, may, under the plea of not guilty, show that his possession does not extend to any part of the land embraced in the writ. *Ibid.*

Landlord and Tenant—Right of Preemption.—Where a lessor stipulated in the lease that when the land is offered for sale the first offer shall be made to the lessee, upon terms as favorable as are offered to any other person; this gives to the lessee no title to, or interest in the land, and creates only a personal obligation. *Elder* v. *Robinson.* LOWRIE, J.

Limitations—Adverse possession.—Where one claims by adverse possession, and his title depends upon the extent of his actual occupancy, he must present to the jury evidence of distinct lines and boundaries, up to which his occupancy for the requisite time has extended, in such a way that there can be no difficulty in framing a clear and definite verdict; otherwise his claim must be rejected. *Sheik* v. *McIlroy.* LEWIS, J.

Limitations—Mutual Accounts—New Promise.—Where there are mutual and unsettled accounts barred by the statute of limitations, the bar will not be removed, except by the acknowledgment of a fixed sum, or at least of a balance that admits of a ready ascertainment; else what new promise can the law imply? *Huff* v. *Richardson.* WOODWARD, J.

Where the conduct of the defendant is such that shews that he does not intend to pay, unless on a settlement satisfactory to himself, and none such is had, the law will imply no new promise. *Ibid.*

Mechanics' Lien.—Witness.—On a *sci. fa.* on a mechanic's lien, a terretenant is a party to the suit, and interested in it only by reason of his ownership of the land, and when that relation ceases, his connection with the suit and its result ceases, and he is a competent witness against the plaintiff. *Holden* v. *Winslow.* LOWRIE, J.

Mechanics' Lien.—Where bricks are furnished for the erection of a house, under a contract to furnish all that may be needed in its erection, the lien is in time if filed within six months after the last bricks are furnished, in pursuance of the contract. *Bartlett* v. *Kingan.* BLACK, C. J.

Mob—County—Sheriff.—Under the Act of Assembly, making the County liable for all property destroyed or injured by riots, if the sheriff be warned of the approaching danger, and fail to take proper legal means to prevent it, he is not entitled to compensation for hiring military companies to aid him in his duty. *Curtis* v. *Allegheny County.* BLACK, C. J.

Practice—Depositions—Justice.—Where notice was given to take de-

positions at Connellsburg, instead of McConnelsburg, it is for the Court below to judge whether the party was misled by the misnomer, and this Court will not interfere with their discretion on such a point. *Gibson* v. *Gibson.* BLACK, C. J.

Where a party "discontinues" his suit before a justice, and confesses judgment for costs, this is no bar to another action. *Ibid.*

Practice—Commission.—Where there is an objection to the manner of executing a commission to take testimony, the Court below will in a proper case, suppress the depositions, if applied to in time, and award a new commission. But such an objection ought not to be heard at the time of trial. *Wallace* v. *McElroy.* LEWIS, J.

Rivers—Nuisance—Act of 1803.—Where a mill dam is erected by a riparian owner, so as to obstruct the navigation of a river, the remedy prescribed by the Act of 1803 must be pursued, and an indictment cannot be sustained without the preliminary proceedings required by the Act. But these proceedings, if had, need not be set out in the indictment. *Commonwealth* v. *Plumer.* LEWIS, J.

Where a person convicted of such a nuisance, is afterwards authorized by Act of Assembly, to construct a lock in his dam, and to take toll at it, this is no condonation of the offence, and does not arrest the judgment. The legislature cannot in such case, be presumed to have intended to grant any other special privilege, than that which is expressly mentioned. *Ibid.*

Roads.—It is not necessary, under the Act of 6 April, 1843, that it should appear on the face of the proceedings, that the owner of land when called upon to release the damages expected to be caused in laying out a road. *Road from Greensburg to Murraysville.* LEWIS, J.

Where the report and draft of a road contain no reference to improvements, it will in this Court, in the absence of evidence, and in support of the order below, be presumed that there were none. *Ibid.*

Roads—Township.—One supervisor of roads has power to employ men to do the ordinary repairs or work upon the roads, but he cannot bind the township by a special contract for the opening of a new road. *McNeal* v. *the township of Allegheny.* WOODWARD, J.

Schools—Taxes.—The revised school law of 7 April, 1849, does not repeal the law of 12 April, 1838, s. 7, imposing a penalty of $20 on collectors of school taxes, who fail to perform this duty. *Hazlet* v. *Smith.* LEWIS, J.

Shipping—Collision.—It is an established rule of navigation, that steam vessels meeting with each other in a clear river, or on the open sea, shall each pass to the right, in case of danger of collision. *Lockwood* v. *Lashell.* LEWIS, J.

Taxes.—The payment of taxes can be enforced only by a warrant to the collector, and not by suit at law, except where the collector has paid them or became responsible for them, when he may sue in his own name. *Bouck* v. *the Supervisors of Kittanning.* LEWIS, J.

Trespass—Dogs.—Trespass is a proper form of action against the owner of a dog, which has killed the plaintiff's sheep; but it is necessary to prove that the defendant knew of his dog's vicious propensities, whether the action be at common law, or under the statute. *Campbell* v. *Brown.* WOODWARD, J.

Trespass—Sheriff.—Where a trespass is committed on real estate, the sheriff may go beyond his bailiwick, into another county to serve the process; and in such action, the defendant will be answerable, not only for the injury to the real estate, but also for injury done to personal property in the same trespass. *Guffy* v. *Free.* LEWIS, J.

Vendor—Warranty of Chattels.—Where a party, desirous of purchasing a lot of "lard grease," inspects it himself, and then makes the purchase and gets a bill of parcels, in which the article is called "lard grease," there is no warranty that the article corresponds *in specie* with the name given to it in the bill. *Carson* v. *Baillie.* LOWRIE, J.

Wills—Execution of.—Where a testatrix was in a weak state, and declared that she could not sign her will without assistance, and requested one of the witnesses to guide her hand in making her signature, which he did; this is a good signing under the statute of wills. *Perchment* v. *Dietrich.* WOODWARD, J.

Wills—Devise—Condition against Alienation.—A devise to one and her heirs, with a condition that she shall not alien during her natural life, is essentially a fee simple, and the condition against alienation is void, and the law will not enforce it however clear may be the intention of the testator. It is an intention which would unduly shackle estates, and which the law frustrates. *Walker* v. *Vincent.* LOWRIE, J.

Wills—Revocation of Devise—Satisfaction—Specific Legacy.—A sale by testator of part of the land devised, is a revocation only *pro tanto. Andrew Brown's Estate.* LEWIS, J.

Where land is devised to several, and afterwards the testator for valuable and not a nominal consideration, ($30) conveys sixty acres of it to one of the devisees, this is not a satisfaction of the devise. *Brown's Estate.*

Where land is devised to be sold and divided among certain named persons, this is a specific legacy, and no part of it can be appropriated to make up the deficiency of any other bequest. *Ibid.*

LEGAL MISCELLANY.

Several notices of books, and a good deal of matter prepared for this head, have been crowded out by the length of the abstracts of decisions in Pennsylvania, which were of too immediate importance and value to be postponed for mere symmetry.

—— We have been favored by a distinguished member of the Philadelphia bar, with the following observations on the recent decision of Judge Paine, which has created so much feeling in the Southern States. We are obliged to defer some remarks of our own on this important subject, till a future number.

"The decision of Judge Paine setting free the eight slaves found in the port of New York, on their way with their master from Virginia to Texas, must fill the country with political indignation and professional disgust. With the first we have nothing to do, and on the second, have a brief word only to say. This happy decision is made to turn upon *Somerset's Case* and like European authority; to which the learned Judge adds that the New York Statutes are to the same effect. These authorities of the common law of England and of the law of nature and nations, says he, show that there can be no property in slaves, except by artificial enactment; and therefore, there being no artificial enactment to warrant it, even for the purpose of transit through their territory, property in slaves cannot exist in New York. When they are there they are free; and if they are brought up on *habeas corpus*, they must be discharged. This is the decision; and it is the most egregious example of deciding the cause and missing the point, and when too that point was of surpassing magnitude and importance, which has ever come under our notice. *Somerset's Case*, [we select that because of the learned judge's citations, it is the best known, and because it illustrates his whole argument and doctrine,] was a decision upon what is called the *policy* of the law. It afforded a fair opening for